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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,615	07/20/2001	Matthew Kenyon Kellogg	KELM-1-1003	2317

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EXAMINER

HUYNH, KHOA D

ART UNIT PAPER NUMBER

3751

DATE MAILED: 09/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/909,615

Applicant(s)

KELLOGG, MATTHEW KENYON

Examiner

Khoa D. Huynh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cap as recited in claim 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the recitation "the sealing unit" lacks antecedent basis.

Claims 2-10 depend on claim 1 and are likewise indefinite.

Regarding claim 8, the recitation "the sealing unit" lacks antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 1, 9, 11 and 12 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Tella et al. (4650095).

The Tella et al. reference discloses a disposable dispensing container.

The container includes a neck (at 54) defining an opening (Fig. 3), at least one locking recess (Fig. 2, see notations), a carrier having a locking arm (Fig. 3) mated to couple with the locking recess, and a fluid access unit (Fig. 3). The carrier also includes attachments, for instance, adhesive (col. 3, line 29) for attaching the carrier to a surface. As shown in Figures 1 and 2, the container slides into the carrier and is locked in place by the locking arm.

All functional and introductory statements of intended use have been fully considered. However, they are deemed not to impose any structural limitations on the claims distinguishable over the Tella et al. device which is capable of being secured or attached to a machine or a machine part for dispensing a liquid lubricant as claimed.

6. Claims 1, 9, 11 and 12 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Loesel, Jr. et al. (5014880).

The Loesel, Jr. et al. reference discloses a disposable dispensing container. The container includes a neck defining an opening (Fig. 1), at least one locking recess (at 50, 51), a carrier (at 22) having a locking arm (at 27 or 28) mated to couple with the locking recess, and a fluid access unit (at 48). The carrier also includes attachments, for instance, adhesive (col. 2, line 38) for attaching the carrier to a surface. As shown in Figures 7-9, the container snaps into the carrier and is locked in place by the locking arm.

All functional and introductory statements of intended use have been fully considered. However, they are deemed not to impose any structural limitations on the claims distinguishable over the Loesel, Jr. et al. device which is capable of being secured or attached to a machine or a machine part for dispensing a liquid lubricant as claimed.

7. Claims 1, 2, 6, 11, 12 and 14 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Heyn (5975372)

The Heyn reference discloses a disposable dispensing container. The container includes a neck defining an opening (Fig. 1), at least one locking recess (at 144), a carrier (at 21, 23) having a locking arm (at 233) mated to couple with the locking recess, and a fluid access unit (at 17). As shown in Figure 6A, the container slides into the carrier and is locked in place by the locking arm. The container also includes a seal (at 16) and a measuring indicator or scale (at 18).

All functional and introductory statements of intended use have been fully considered. However, they are deemed not to impose any structural limitations on the claims distinguishable over the Heyn device which is capable of being secured or attached to a machine or a machine part for dispensing a liquid lubricant as claimed.

8. Claims 1, 9, 11 and 12 (as best understood) are rejected under 35 U.S.C. 102(e) as being anticipated by Strickler et al. (6321).

The Strickler et al. reference discloses a disposable dispensing container. The container includes a neck defining an opening (Fig. 19), at least one locking recess (at 192), a carrier (at 71) having a locking arm (at 77) mated to couple with the locking recess, and a fluid access unit (at 213). The carrier also includes attachments (at 73) for attaching the carrier to a surface. As shown in Figure 18, the container slides into the carrier and is locked in place by the locking arm.

All functional and introductory statements of intended use have been fully considered. However, they are deemed not to impose any structural limitations on the claims distinguishable over the Strickler et al. device which is capable of being secured or attached to a machine or a machine part for dispensing a liquid lubricant as claimed.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-5, 10 and 15 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Strickler et al. in view of Oglesbee et al. (6012596).

Regarding claims 2-4, the Strickler et al. device DIFFERS in that it does not include a seal and a cap as claimed. Attention, however, is directed to the Oglesbee et al. reference which discloses a container (at 12) having a seal (at 28) made of foil (col. 4, line 8) and a cap (at 40). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Strickler et al. device by employing a seal and a cap, in view of the teaching of Oglesbee et al., in order to seal and prevent the contents from spilling out when the container is being transported for storage.

Regarding claims 5 and 15, the modified Strickler et al. fluid access unit also includes a tube (at 215) which can be used to puncture the seal.

Regarding claim 10, although not specifically discloses, the modified Strickler et al. carrier unit (at 71) can be used as a heat shield to prevent the container from coming into contact with a heated surface.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Strickler et al. (as discussed above) and further in view of Heyn.

The modified Strickler et al. device DIFFERS in that it does not specifically include a measuring scale as claimed. Attention, however, is directed to the Heyn reference which discloses a disposable dispensing container (at 1) having a measuring indicator or scale (at 18). Therefore, it would have been obvious to

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one of ordinary skill in the art at the time the invention was made to have modified the modified Strickler et al. device by employing a measuring indicator, in view of the teaching of Heyn, in order to determine the amount of fluid inside the content.

12. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over modified Strickler et al. (as discussed above) in view Anderson (4722463).

The modified Strickler et al. reference DIFFERS in that it does not include a strap as claimed. Attention, however, is directed to the Anderson reference which discloses a fluid-dispensing container having a carrier (at 11) and a strap (at 60) for securing the container to the carrier. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Strickler et al. carrier by employing a strap, in view of the teaching of Anderson, in order to provide additional securing means for securing the container to the carrier.

13. Claim 8 (as best understood) is rejected under 35 U.S.C. 103(a) as being unpatentable over Strickler et al. (as discussed in paragraph 8) in view of Anderson (4722463).

The Strickler et al. reference DIFFERS in that the fluid access unit does not specifically include an attachment ring as claimed. Attention, however, is directed to the Anderson reference which discloses a fluid dispensing container having a fluid access unit (at 24) with an attachment ring (at 25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to have modified the Strickler et al. fluid access unit by employing an attachment ring, in view of the teaching of Anderson, in order to provide additional sealing means for preventing the content from leaking out from inside the container.

Conclusion

14. The prior art made of record is considered pertinent to applicant's disclosure. Jones, Taylor and GB 2071055 were cited to show a liquid dispenser for an engine. Falb, Steidley and Kutterer were cited to show a fluid access unit having a puncture means for piercing a seal membrane. King and Gaul et al. were cited to show a container mounted on a carrier.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (703) 306-5483. The examiner can normally be reached on M-F (7:00-4:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7766 for regular communications and (703) 308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


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Khoa D. Huynh
Patent Examiner
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HK
September 25, 2002



TIMOTHY L. MAUST
PRIMARY EXAMINER